



The Competitive Carriers Association

**Rural Cellular Association**

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September 27, 2011

**Via ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: CC Docket No. 01-92  
WC Docket No. 10-90  
WC Docket No. 07-135  
WC Docket No. 05-337  
GN Docket No. 09-51**

Dear Ms. Dortch:

On September 24, 2011, Steven K. Berry, President and CEO of RCA, spoke on the phone with Zac Katz regarding Chairman Genachowski's current thinking on universal service fund (USF) and Intercarrier Compensation (ICC) reform. RCA has been and is committed to TRUE (Technology neutral, Revenue neutral, Universal and Economical) reform of the USF, elevating the interests of consumers over those of any particular industry segment.<sup>1</sup> Based on Mr. Berry's conversation with Mr. Katz, RCA is increasingly concerned with the Chairman's reform proposals. Some of RCA's concerns are highlighted below. However, RCA expects to meet with Mr. Katz to provide additional information in response to his questions regarding the Mobility Fund and to discuss alternatives to contemplated reform proposals that do not adequately include funding for wireless services. This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's Rules.

- *FCC's Proposed Mobility Fund is Insufficient to Meet Consumers' Wireless Needs.*
  - RCA does not support the FCC's Mobility Fund proposal because \$300 million is an inadequate level of support for mobility.<sup>2</sup> A \$300 million, or even a \$500 million, wireless fund would dramatically undervalue the ability of wireless providers to deliver broadband service to high-cost, rural communities. RCA has advocated that \$1.5 billion, or *half* of what the

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<sup>1</sup> Letter of Steven K. Berry, President & CEO, RCA – The Competitive Carriers Association; Keven K. Lippert, Vice President & General Counsel, ViaSat, Inc.; Jeffrey H. Blum, Senior Vice-President & Deputy General Counsel, DISH Network L.L.C., EchoStar Technologies L.L.C.; Lisa R. Scalpone, Vice President & General Counsel, WildBlue Communications, Inc.; Dean A. Manson, Senior Vice President, General Counsel & Secretary, Hughes Network Systems, LLC, to Julius Genachowski, Chairman, FCC, *et al.* (Sept. 20, 2011) at 1 [hereinafter TRUE Reform Letter].

<sup>2</sup> *In re Universal Service Reform Mobility Fund, Comments of Rural Cellular Association*, WT Docket No. 10-208 (Dec. 16, 2010) at 9–11; *In re Universal Service Reform Mobility Fund, Reply Comments of Rural Cellular Association*, WT Docket No. 10-208 (Jan. 18, 2011) at 4–5.

wireless industry contributes, is a more appropriate amount of support for mobility.<sup>3</sup> In the spirit of compromise and achieving TRUE reform, RCA could support a \$800 million Mobility Fund, approximately *one-fourth* of what the wireless industry contributes, if the FCC also allocates a sufficient amount for annual operating expenses and if the largest wireless carriers and rural local exchange carriers are prohibited from participating in the Mobility Fund.

- RCA also opposes the use of anticompetitive reverse auctions.<sup>4</sup> Rather, the FCC should use a forward-looking cost model, coupled with portability, to competitively base support on the costs an efficient carrier would incur in providing the required minimum level of broadband service for each area.<sup>5</sup>
- If the FCC decides to use reverse auctions to distribute USF, despite the harms that will result, Mr. Katz asked RCA to propose conditions that would accompany USF support. RCA has long supported tying awards of high-cost support to public interest obligations within the carrier's control,<sup>6</sup> and RCA's members are willing and able to meet reasonable public interest obligations that the Commission may choose to adopt as conditions of USF support.<sup>7</sup> RCA agrees that all broadband connectivity subsidies should also be subject to specified public interest obligations, including open access, interconnection, data roaming and strict build-out requirements that take into account market realities. At Mr. Katz's request, RCA is compiling a comprehensive list of possible conditions that should be imposed on USF recipients, and we look forward to presenting this list to Mr. Katz.

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<sup>3</sup> *In re Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up, Comments of The Rural Cellular Association*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45 (Aug. 24, 2011) at 13–14 [hereinafter *ABC Plan Comments*]; *In re Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up, Reply Comments of RCA – The Competitive Carriers Association*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45 (Sept. 6, 2011) at 8 [hereinafter *ABC Plan Reply*].

<sup>4</sup> See *In re Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime, Comments of The Rural Cellular Association*, WC Docket Nos. 10-90, 07-135, 05-337; GN Docket No. 09-51; CC Docket No.01-92 (Apr. 18, 2011) at 5–6, 9, 17–19 [hereinafter *CAF NPRM Comments*]; *In re Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime, Reply Comments of The Rural Cellular Association*, WC Docket Nos. 10-90, 07-135, 05-337; GN Docket No. 09-51; CC Docket No.01-92 (May 23, 2011) at 10–16 [hereinafter *CAF NPRM Reply*]; *In re Mobility Fund; Connect America Fund; A National Broadband Plan for Our Future; High-Cost Universal Service Support, Comments of Cellular South, Inc.; NE Colorado Cellular, Inc. d/b/a Viera Wireless; Rural Cellular Association; Westlink Communications, LLC*, WT Docket No. 10-208; WC Docket Nos. 10-90, 05-337; GN Docket No. 09-51 (Dec. 16, 2010) at 4–23.

<sup>5</sup> Letter of Steven K. Berry, President & CEO, RCA, and Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, filed in WC Docket No. 10-90 *et al.* (Aug. 3, 2011) at 5–8 [hereinafter *ABC Plan Letter*].

<sup>6</sup> Letter of Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, filed in WC Docket No. 10-90 *et al.* (Feb. 4, 2011) at 2.

<sup>7</sup> *ABC Plan Comments* at 9–10.

- *A Right of First Refusal (RoFR) is Competitively and Technologically Biased.* RCA is adamantly opposed to a RoFR for wireline carriers.<sup>8</sup> Institutionalizing a bald, technology-based preference for ILECs undermines the competitiveness of wireless providers and ignores the preferences of consumers, who are abandoning wireline services in favor of mobile wireless broadband alternatives.<sup>9</sup> A RoFR would grant ILECs a unilateral right to exclude wireless competitors from CAF support, further entrenching them as broadband monopolists in rural America, and would reward inefficient wireline network investment, over a more efficient and cost-effective provider.<sup>10</sup> Finally, a wireline RoFR violates the longstanding principle of competitive neutrality.<sup>11</sup>
- *ICC Reform is Not Enough.* The ABC Plan supporters, and apparently the FCC, are under the false impression that savings as a result of ICC reform would offset the loss of USF support. RCA is pleased the FCC is considering a bill-and-keep approach to ICC. And while it is true that a transition to bill-and-keep would generate some savings for rural wireless carriers, any such savings would be modest in comparison to the explicit high-cost support at stake.<sup>12</sup> RCA members have estimated that a reduction in the terminating default would reduce their costs by anywhere from one percent to 10 percent of their annual USF support.<sup>13</sup> Thus, these ICC-related savings would be dwarfed by the dramatic reductions in high-cost support that rural wireless carriers would experience under the ABC Plan.
- *Achieving Faster Broadband Speeds Depends on Availability of Spectrum and Equipment.* RCA has supported the FCC's 4/1 speed designation,<sup>14</sup> particularly considering the FCC's authority to revisit the speed requirements every couple of years. Unlike wireline networks, wireless technology is future-proofed and easily scalable. Wireless data speeds, coverage, and capacity are constantly improving as newer, more efficient technology develops and reaches the market. Speed and coverage, however, ultimately hinge on the availability of spectrum and devices. Without interoperable spectrum, RCA members will continue to be handicapped in deploying next-generation, high-speed LTE networks and services that rural consumers want and deserve.<sup>15</sup>

In addition to all of RCA's policy concerns, timing of the FCC's reform is critical. As RCA has said since the Chairman first began efforts to reform the fund, the FCC must provide wireless competitive eligible telecommunications carriers (CETCs) sufficient funding and must not phase down wireless CETC support before the FCC has established and implemented a replacement

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<sup>8</sup> *ABC Plan Letter* at 3–4; *ABC Plan Comments* at 14–17; *ABC Plan Reply* at 3, 6, 10–11; *TRUE Reform Letter* at 1.

<sup>9</sup> *Local Telephone Competition Report* at 24 (Mar. 11, 2011).

<sup>10</sup> *ABC Plan Comments* at 14–17; *ABC Plan Reply* at 10–11.

<sup>11</sup> *Id.*

<sup>12</sup> *ABC Plan Letter* at 3; *ABC Plan Comments* at 21–22.

<sup>13</sup> *ABC Plan Comments* at 22.

<sup>14</sup> *TRUE Reform Letter* at 2.

<sup>15</sup> *In re 700 MHz Mobile Equipment Capability, Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired, Commercial 700 MHz Frequency Blocks, 700 MHz Block A Good Faith Purchasers Alliance*, RM-11592 (Sept. 9, 2009) at 2–6, 10–11.

mechanism that wireless carriers can access.<sup>16</sup> The ability of rural wireless carriers to meet the demands of their subscribers depends on their access to existing high-cost support in the near term. The threatened withdrawal of current support poses significant risks of forcing carriers to revisit existing deployment plans.<sup>17</sup> Several RCA members have indicated that they will have to decommission sites without USF support as on-going operation will be infeasible. Others have indicated that the current uncertainty about whether they will have access to USF in the near term and in the future has prevented capital investments in their networks. Injecting uncertainty into universal service reform that doesn't currently exist prevents carriers from planning for current service and will stall future deployments. Uncertainty is counterproductive to this Administration's goal of providing at least 98% of Americans with access to 4G high-speed wireless service.<sup>18</sup> From a business perspective alone, the FCC must allow current CETCs receiving USF support the opportunity to determine whether they will have access to USF under the FCC's new mechanism to avoid stranded investment.

RCA continues to urge the Commission to adhere to principles of market-oriented policy while promoting competition and consumer choice. RCA understands the need for compromise on the part of all parties in order to effectuate this long overdue change in universal service policy. While RCA agrees on the need for reform, that reform must nonetheless be tailored to serve the goals of efficiency and sufficiency while focusing on forward-looking policy changes. Unlike the recommendations of the ABC Plan and similar wireline industry proposals, RCA's recommendations aim to serve all these goals.

Sincerely,

/s/

Rebecca M. Thompson  
General Counsel

cc: Zac Katz

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<sup>16</sup> *CAF NPRM Comments* at 20–21; *CAF NPRM Reply* at 5.

<sup>17</sup> C Letter of Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, filed in WC Docket No. 10-90 *et al.* (July 28, 2011) at 2.ite to July 27 Letter.

<sup>18</sup> Press Release, The White House, President Obama Details Plan to Win the Future through Expanded Wireless Access (Feb. 10, 2011), <http://www.whitehouse.gov/blog/2011/02/10/president-national-wireless-initiative-we-re-going-have-our-game-marquette>.